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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 ORANGE COUNTY COASTKEEPER, a
13 California non-profit corporation,

14 Plaintiff,

15 v.

16 HIXSON METAL FINISHING, a
17 California corporation; FPC
18 MANAGEMENT, LLC; and REID
19 WASHBON, an individual, as Trustee of
20 the Reid Washbon Trust,

21 Defendants.

Civil Case No. 8:22-cv-00932

22 **COMPLAINT FOR**
23 **DECLARATORY AND**
24 **INJUNCTIVE RELIEF AND CIVIL**
25 **PENALTIES**

26 **(Federal Water Pollution Control Act,**
27 **33 U.S.C. §§ 1251 *et seq.*)**

28 Orange County Coastkeeper (“Coastkeeper” or “Plaintiff”), by and through counsel,
hereby alleges:

I. JURISDICTION AND VENUE

1. Plaintiff brings this civil suit under the citizen suit enforcement provision of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (the “Clean Water Act” or the “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and 2201 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States). On February 23, 2022, Plaintiff issued a 60-day Notice of Violation and Intent To Sue letter (the “Notice Letter”), attached hereto as **Exhibit A** and

1 incorporated by reference herein, to Hixson Metal Finishing (“Hixson”), FPC
2 Management LLC (“FPC”), and Reid Washbon, Trustee of the Reid Washbon Trust
3 (“Trustee”) (collectively, “Defendants”), as the owners and operators of the Hixson Metal
4 Finishing facilities located on Production Place in Newport Beach (the “Facility”). The
5 Notice Letter informed Defendants of the violations of California’s General Permit for
6 Discharges of Storm Water Associated with Industrial Activities (*National Pollution*
7 *Discharge Elimination System* (“NPDES”) General Permit No. CAS000001, *Water*
8 *Quality Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ, as amended*
9 *by Order No. 2015-0122-DWQ, as subsequently amended by Order 20XX-XXXX-DWQ*
10 *(effective July 1, 2020)* (hereinafter, the “Storm Water Permit” or “Permit”) and the Clean
11 Water Act at the Facility. The Notice Letter informed Defendants of Plaintiff’s intent to
12 file suit against Defendants to enforce the Storm Water Permit and the Clean Water Act.

13 2. The Notice Letter was also sent to the Attorney General of the United States
14 Department of Justice (“USDOJ”), the Administrator of the United States Environmental
15 Protection Agency (“EPA”), the Regional Administrator of EPA Region IX, the Executive
16 Director of the State Water Resources Control Board (the “State Board”), and the
17 Executive Officer of the Regional Water Quality Control Board, Santa Ana Region (the
18 “Santa Ana Regional Board” or “Regional Board”), as required by 40 C.F.R. § 135.2(a)(1)
19 and Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A).

20 3. More than sixty (60) days have passed since the Notice Letter was sent via
21 certified mail to Defendants and the State and Federal agencies. Plaintiff is informed and
22 believes, and thereon alleges, that neither the EPA, USDOJ, nor the State of California
23 have commenced or are diligently prosecuting an action to redress the violations alleged
24 in the Notice Letter and in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is
25 not barred by any prior administrative penalty under Section 309(g) of the CWA. 33
26 U.S.C. § 1319(g).

27 4. Venue is proper in the Central District of California pursuant to Section
28 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are

1 located within this judicial district.

2 5. Plaintiff seeks relief for Defendants' substantive and procedural violations of
3 the Storm Water Permit and the Clean Water Act resulting from industrial activities at the
4 Facility.

5 **II. INTRODUCTION**

6 6. This complaint seeks relief for the Defendants' unlawful discharges of
7 pollutants into waters of the United States from industrial operations at the Facility.
8 Specifically, Coastkeeper is informed and believes, and thereon alleges, that Defendants'
9 discharges of pollutants from the Facility enter the Orange County Municipal Separate
10 Storm Sewer System ("MS4") and into nearby Lower Newport Bay (collectively referred
11 to as the "Receiving Waters"), in violation of the substantive and procedural requirements
12 of the Storm Water Permit and the Clean Water Act. These violations have been occurring
13 since at least March 6, 2017, and are ongoing and continuous.

14 7. With every significant rainfall event, millions of gallons of polluted storm
15 water, originating from industrial operations such as the Facility, pour into storm drains
16 and local waterways. The consensus among regulatory agencies and water quality
17 specialists is that storm water pollution accounts for more than half of the total pollution
18 entering surface waters each year. These surface waters, known as receiving waters, are
19 ecologically sensitive areas. These waters are essential habitat for dozens of fish and bird
20 species as well as macro-invertebrate and invertebrate species. Storm water and non-storm
21 water contain sediment, heavy metals, such as aluminum, iron, magnesium, chromium,
22 copper, lead, mercury, nickel, and zinc, as well as high concentrations of nitrate and nitrite,
23 and other pollutants. Exposure to polluted storm water harms the special aesthetic and
24 recreational significance that the surface waters have for people in the surrounding
25 communities. The public's use of the surface waters exposes many people to toxic metals
26 and other contaminants in storm water and non-storm water discharges. Non-contact
27 recreational and aesthetic opportunities, such as wildlife observation, are also impaired by
28 polluted discharges to surface waters such as the Receiving Waters.

1 **III. PARTIES**

2 **A. Orange County Coastkeeper.**

3 8. Orange County Coastkeeper is a non-profit public benefit corporation
4 organized under the laws of the State of California and has over 2,400 members. Orange
5 County Coastkeeper's office is located at 3151 Airway Avenue, Suite F-110, Costa Mesa,
6 California 92626.

7 9. Orange County Coastkeeper is dedicated to the preservation, protection, and
8 defense of the environment, wildlife, and natural resources of Orange County.
9 Coastkeeper's mission is to preserve the region's water resources so they are swimmable,
10 drinkable, and fishable for present and future generations. To further these goals, Orange
11 County Coastkeeper actively seeks federal and state agency implementation of the Clean
12 Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself
13 and its members.

14 10. Members of Orange County Coastkeeper live and own homes in the Lower
15 Newport Bay and the greater watershed and use and enjoy the waters into which the
16 Facility discharges polluted storm water. Members of Orange County Coastkeeper use
17 these waterways to participate in a variety of water sports and other activities including,
18 but not limited to, fishing, swimming, boating, kayaking, bird watching, viewing wildlife,
19 hiking, biking, surfing, wading, standup paddle boarding, walking, running, and engaging
20 in scientific study, including monitoring, restoration, and research activities. The
21 discharge of pollutants from the Facility impairs each of these uses.

22 11. Defendants' failure to comply with the procedural and substantive
23 requirements of the Storm Water Permit and the Clean Water Act including, but not
24 limited to, discharges of polluted storm water from the Facility, failure to report such
25 pollution, and failure to act in accordance with the Storm Water Permit to improve the
26 quality of storm water discharges from the Facility, degrades water quality and harms
27 aquatic life in the Santa Ana River and its tributaries, and impairs Orange County
28 Coastkeeper members' use and enjoyment of those waters, giving Plaintiff standing on

1 behalf of its members.

2 12. The violations of the Storm Water Permit and Clean Water Act at the Facility
3 are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are
4 being, and will continue to be adversely affected by Defendants' failure to comply with
5 the Storm Water Permit and the Clean Water Act. The relief sought herein will redress the
6 harms to Plaintiff's members caused by Defendants' activities.

7 13. Continuing commission of the acts and omissions alleged herein will
8 irreparably harm Plaintiff's members, for which harm they have no plain, speedy, or
9 adequate remedy at law.

10 **B. The Owners and Operators of the Facility.**

11 14. Hixson Metal Finishing is the current owner and operator of the Facility, and
12 has been the owner and operator of the Facility at all times relevant to this complaint, and
13 is a responsible party under the Clean Water Act.

14 15. Coastkeeper is informed and believes, and thereon alleges, that Hixson is an
15 active California corporation, registered and authorized to do business in California.

16 16. Coastkeeper is informed and believes, and thereon alleges, that Dale W.
17 Young, Jr., located at 829 Production Place, Newport Beach, CA 92663, is the registered
18 agent for service of process for Hixson.

19 17. Coastkeeper is informed and believes, and thereon alleges, that Bruce Greene
20 is the Facility Contact and EHS Manager identified by Hixson in its Notice of Intent
21 ("NOI") for coverage under the Storm Water Permit and is also identified as the Legally
22 Responsible Person in the Facility's Storm Water Pollution Prevention Plan ("SWPPP").

23 18. Coastkeeper is informed and believes, and thereon alleges, that Douglas
24 Greene is identified by Hixson in its Notice of Intent ("NOI") for coverage under the Storm
25 Water Permit as Hixson's President.

26 19. Coastkeeper is informed and believes, and thereon alleges, that FPC
27 Management LLC is the owner of the real property underlying the portion of the Facility
28 at 861 Production Place where Hixson operates industrial activities.

1 20. Coastkeeper is informed and believes, and thereon alleges, that FPC has been
2 the owner of this portion of the Facility since at least March 6, 2017.

3 21. Coastkeeper is informed and believes, and thereon alleges, that FPC has a
4 lease agreement or other contractual relationship with Hixson that gives FPC knowledge
5 and control over the acts and omissions giving rise to the violations alleged in this
6 complaint.

7 22. Coastkeeper is informed and believes, and thereon alleges, that FPC is
8 currently an active Delaware limited liability company registered in California.

9 23. Coastkeeper is informed and believes, and thereon alleges, that FPC's
10 registered agent for service is Adam John Mikkelsen located at 307 Medina Way, Newport
11 Beach, CA 92661.

12 24. Coastkeeper is informed and believes, and thereon alleges, that the real
13 property underlying the portion of the Facility located at 816 Production Place is held in
14 the Reid Washbon Trust.

15 25. Coastkeeper is informed and believes, and thereon alleges, that Reid
16 Washbon is the trustee of the Reid Washbon Trust.

17 26. Coastkeeper is informed and believes, and thereon alleges, that the portion of
18 the Facility located at 816 Production Place has been held by the Reid Washbon Trust at
19 all times relevant to this complaint.

20 27. Coastkeeper is informed and believes, and thereon alleges, that the Trustee
21 has a lease agreement or other contractual relationship with Hixson that gives the Trustee
22 knowledge and control of Hixson's acts and omissions giving rise to the violations alleged
23 in this complaint.

24 28. Property owners with knowledge and control of the activities giving rise to a
25 Clean Water Act claim are liable for those violations over which they had knowledge and
26 control.

27 **IV. LEGAL BACKGROUND**

28 **A. The Clean Water Act.**

1 29. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the
2 discharge of any pollutant into waters of the United States unless the discharge complies
3 with various enumerated sections of the CWA. Among other things, section 301(a)
4 prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit
5 issued pursuant to section 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

6 30. The Clean Water Act requires point source discharges of pollutants to
7 navigable waters be regulated by an NPDES permit. 33 U.S.C. § 1311(a); *see* 40 C.F.R. §
8 122.26(c)(1).

9 31. The “discharge of a pollutant” means, among other things, “any addition of
10 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40
11 C.F.R. § 122.2.

12 32. The term “pollutant” includes “dredged spoil, solid waste... rock, sand, cellar
13 dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C.
14 § 1362(6); *see* 40 C.F.R. § 122.2.

15 33. “Waters of the United States” are defined as “navigable waters,” and “all
16 waters which are currently used, were used in the past, or may be susceptible to use in
17 interstate or foreign commerce, including waters which are subject to the ebb and flow of
18 the tide.” 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

19 34. The EPA promulgated regulations defining “waters of the United States.” *See*
20 40 C.F.R. § 122.2. The EPA interprets waters of the United States to include not only
21 traditionally navigable waters, but also other waters, including waters tributary to
22 navigable waters, wetlands adjacent to navigable waters, and intermittent streams that
23 could affect interstate commerce. *Id.*

24 35. The Clean Water Act confers jurisdiction over waters that are tributaries to
25 traditionally navigable waters where the water at issue has a significant nexus to the
26 navigable water. *See Rapanos v. United States*, 547 U.S. 715 (2006); *see also N. Cal. River*
27 *Watch v. City of Healdsburg*, 496 F.3d 993 (9th Cir. 2007).

28 36. A significant nexus is established if the “[receiving waters], either alone or

1 in combination with similarly situated lands in the region, significantly affect the
 2 chemical, physical, and biological integrity of other covered waters.” *Rapanos*, 547 U.S.
 3 at 779; *N. Cal. River Watch*, 496 F.3d at 999-1000.

4 37. A significant nexus is also established if waters that are tributary to navigable
 5 waters have flood control properties, including functions such as the reduction of flow,
 6 pollutant trapping, and nutrient recycling. *Rapanos*, 547 U.S. at 782; *N. Cal. River Watch*,
 7 496 F.3d at 1000-1001.

8 38. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for
 9 citizen enforcement actions against any “person” who is alleged to be in violation of an
 10 “effluent standard or limitation . . . or an order issued by the Administrator or a State with
 11 respect to such a standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(i) and 1365(f).

12 39. Defendants are “persons” within the meaning of Section 502(5) of the Clean
 13 Water Act. *See* 33 U.S.C. § 1362(5).

14 40. An action for injunctive relief is authorized under Section 505(a) of the Clean
 15 Water Act. *See* 33 U.S.C. § 1365(a).

16 41. Each separate violation of the Clean Water Act subjects the violator to a
 17 penalty of up to \$59,973 per day per violation for all violations that occurred after
 18 November 2, 2015 and were assessed on or after January 12, 2022. *See* 33 U.S.C. §§
 19 1319(d) and 1365(a); Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §
 20 19.4.

21 42. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits
 22 prevailing or substantially prevailing parties to recover litigation costs, including
 23 attorneys’, experts’, and consultants’ fees.

24 **B. California’s Storm Water Permit.**

25 43. Section 402(p) of the Clean Water Act establishes a framework for regulating
 26 industrial storm water discharges under the NPDES permit program. 33 U.S.C. § 1342(p).

27 44. Section 402(b) of the Clean Water Act allows each state to administer its own
 28 EPA-approved NPDES permit program for regulating the discharge of pollutants,

1 including discharges of polluted storm water. *See* 33 U.S.C. § 1342(b). States with
 2 approved NPDES permit programs are authorized by section 402(b) to regulate industrial
 3 storm water discharges through individual NPDES permits issued to dischargers and/or
 4 through the issuance of a statewide general NPDES permit applicable to all industrial
 5 storm water dischargers. *See id.*

6 45. California is a state authorized by EPA to issue NPDES permits.

7 46. In California, the State Board is charged with regulating pollutants to protect
 8 California's water resources. *See* Cal. Water Code § 13001.

9 47. The Storm Water Permit is a statewide general NPDES permit issued by the
 10 State Board pursuant to the Clean Water Act.

11 48. The Storm Water Permit was issued on July 1, 2015 pursuant to Order No.
 12 2014-0057-DWQ.

13 49. On November 6, 2018, pursuant to Order No. 2015-0122-DWQ, the State
 14 Board amended the Storm Water Permit to incorporate Total Maximum Daily Load
 15 ("TMDL") implementation requirements for waterbodies subject to TMDLs with
 16 contributions from industrial dischargers.

17 50. In order to discharge storm water to waters of the United States lawfully in
 18 California, industrial dischargers must secure coverage under the Storm Water Permit and
 19 comply with its terms, or obtain and comply with an individual NPDES permit. *See* Storm
 20 Water Permit Finding 12. Prior to beginning industrial operations, dischargers are required
 21 to apply for coverage under the Storm Water Permit by submitting a Notice of Intent to
 22 Comply with the Terms of the General Permit to Discharge Storm Water Associated with
 23 Industrial Activity ("NOI") to the State Board. *See* Storm Water Permit, Finding 17.

24 51. Violations of the Storm Water Permit are violations of the Clean Water Act.
 25 *See* Storm Water Permit, Section XXI(A) (Duty to Comply).

26 **C. The Storm Water Permit's Discharge Prohibitions And Technology**
 27 **Based Effluent Limitations.**

28 52. The Storm Water Permit contains certain absolute prohibitions. The Storm

1 Water Permit prohibits the direct or indirect discharge of materials other than storm water
 2 (“non-storm water discharges”), which are not otherwise authorized by an NPDES permit,
 3 to the waters of the United States. *See* Storm Water Permit, Discharge Prohibition III(B).

4 53. The Storm Water Permit Effluent Limitations require dischargers covered by
 5 the Storm Water Permit to reduce or prevent pollutants associated with industrial activity
 6 in storm water discharges through the implementation of Best Available Technology
 7 Economically Achievable (“BAT”) for toxic or non-conventional pollutants, and Best
 8 Conventional Pollutant Control Technology (“BCT”) for conventional pollutants. Toxic
 9 pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among
 10 others. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical
 11 oxygen demand (“BOD”), total suspended solids (“TSS”), oil and grease (“O&G”), pH,
 12 and fecal coliform. *See* Storm Water Permit, Section V(A).

13 54. Pursuant to the CWA and the Storm Water Permit, dischargers must employ
 14 Best Management Practices (“BMPs”) that constitute BAT and BCT to reduce or
 15 eliminate storm water pollution. 33 U.S.C. § 1311(b); Storm Water Permit, Effluent
 16 Limitation V(A).

17 55. EPA’s NPDES Storm Water Multi-Sector General Permit for Industrial
 18 Activities (“MSGP”) includes numeric benchmarks for pollutant concentrations in storm
 19 water discharges (“EPA Benchmarks”), which are, in part, incorporated into the Storm
 20 Water Permit via the Table 2 Numeric Action Levels (“NALs”). *See* Storm Water Permit,
 21 Monitoring, Sampling and Analysis, XI(B).

22 56. The EPA Benchmarks provide an objective standard to determine whether a
 23 facility’s BMPs are successfully developed and/or implemented and achieve compliance
 24 with BAT and BCT standards. Storm Water Permit, Effluent Limitation V(A); *See* EPA’s
 25 NPDES MSGP Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

26 57. The EPA Benchmarks and NALs for the following parameters are as follows:
 27 pH – 6.0 – 9.0 standard units; TSS – 100 mg/L; copper – 0.0332 mg/L; zinc – 0.26 mg/L;
 28 nickel – 1.02 mg/L; iron – 1.0 mg/L; nitrate plus nitrate as nitrogen (“N+N”) – 0.68 mg/L;

O&G – 15 mg/L; and aluminum – 0.75 mg/L. Additional EPA Benchmarks for heavy metals, which depend on the hardness of the receiving water, also apply to storm water discharges from the Facility.

58. Discharges from an industrial facility containing pollutant concentrations that exceed EPA Benchmarks indicate that BMPs that meet BAT for toxic pollutants and/or BCT for conventional pollutants have not been developed and/or implemented at the Facility. *Id.*

D. The Storm Water Permit's Numeric Effluent Limitations.

59. Effective July 1, 2020, the Storm Water Permit establishes numeric effluent limitations ("NELs") for facilities that discharge storm water associated with industrial activities into water bodies that have approved TMDLs set forth in Storm Water Permit, Attachment E.

60. An instantaneous maximum NEL exceedance occurs when two (2) or more analytical results from samples taken for any single parameter within a reporting year exceed the instantaneous maximum NEL value. Storm Water Permit, Section V(C)(1).

61. An exceedance of an NEL is a violation of the Storm Water Permit and the Clean Water Act. *Id.*

62. The Facility is subject to the San Diego Creek and Newport Bay Toxics TMDL requirements for metals and selenium, which include the following NELs: copper – 0.00578 mg/L, lead – 0.221 mg/L, and zinc – 0.095 mg/L. *See* Storm Water Permit, Table F.46

E. The Storm Water Permit's Receiving Water Limitations.

63. The CWA and the Storm Water Permit's Receiving Water Limitations prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable Water Quality Standards ("WQS"). *See* 33 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§122.4(d), 122.4(i), 122.44(d); Storm Water Permit, Receiving Water Limitation VI(A).

1 64. WQS establish the water quality goals for a water body. *See* 40 C.F.R.
2 §131.2.

3 65. WQS are pollutant concentration levels determined by the State Board, the
4 various regional boards, and the EPA to be protective of the beneficial uses of the waters
5 that receive polluted discharges.

6 66. Discharges above or below WQS cause or contribute to impairment of the
7 beneficial uses of the waters that receive polluted discharges.

8 67. The State of California regulates water quality through the State Board and
9 the nine Regional Boards. Each Regional Board maintains a separate Water Quality
10 Control Plan, called a basin plan, which contains WQS for water bodies within its
11 geographical area.

12 68. The Santa Ana Regional Board adopted the Basin Plan for the Santa Ana
13 Region (the “Santa Ana Basin Plan” or the “Basin Plan”). The Santa Ana Basin Plan
14 identifies the “Beneficial Uses” of water bodies within the region. The Basin Plan
15 identifies the Beneficial Uses for the Lower Newport Bay to include: navigation (NAV);
16 water contact recreation (REC1); non-contact water recreation (REC2); commercial and
17 sport fishing (COMM); wildlife habitat (WILD); rare, threatened, or endangered species
18 (RARE); spawning reproduction and development (SPWN); marine habitat (MAR); and
19 shellfish harvesting (SHEL). *See* Santa Ana Basin Plan at Table 3-1.

20 69. Surface waters that cannot support the Beneficial Uses of those waters listed
21 in the basin plans are designated as impaired water bodies pursuant to Section 303(d) of
22 the Clean Water Act, 33 U.S.C. § 1313(d).

23 70. According to the 2018 303(d) List of Impaired Water Bodies, Lower Newport
24 Bay is listed for the following water quality impairments: chlordane, copper, DDT,
25 indicator bacteria, nutrients, PCBs, and toxicity. Polluted discharges from industrial sites,
26 such as the Facility, contribute to the degradation of these already-impaired surface waters
27 and aquatic-dependent wildlife that depend on these waters. These contaminated
28 discharges can and must be controlled for the ecosystem to regain its health.

71. Discharges of polluted storm water to the Receiving Waters pose threats to the public, dramatically affect the use and enjoyment of the surrounding environment, and adversely affect the aquatic environment.

72. Discharges of pollutants at levels above WQS, like those from the Facility, cause or contribute to the impairment of the Beneficial Uses of the Receiving Waters.

73. WQS may be either numeric or narrative objectives. Applicable WQS include, among others, the water quality objectives in the Basin Plan, and the Criteria for Priority Toxic Pollutants in the State of California (“CTR”), 40 C.F.R. § 131.38.

74. The Santa Ana Basin Plan provides that “[t]he pH of bays and estuaries shall not be raised above 8.6 or depressed below 7.0 as a result of controllable water quality factors.” *See* Santa Ana Basin Plan, 4-5.

75. The Santa Ana Basin Plan also includes a narrative WQS that establishes a toxicity standard which states that “[t]he concentrations of toxic substances in the water column, sediments or biota shall not adversely affect beneficial uses.” *See* Santa Ana Basin Plan, 4-20.

76. Further, the Santa Ana Basin Plan states that “[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health.” *See* Santa Ana Basin Plan 4-6.

77. The Santa Ana Basin Plan also states that “[t]he concentrations of toxic pollutants in the water column, sediments or biota shall not adversely affect beneficial uses” *Id.*

78. The CTR establishes numeric WQS to protect human health and the environment in the State of California. Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California Factsheet, EPA-823-00-008 (April 2000), available at: <http://water.epa.gov/lawsregs/rulesregs/ctr/factsheet.cfm>.

79. The numeric WQS established in the CTR for zinc is 0.12 mg/L, silver is 0.0034 mg/L, cadmium is 0.0043 mg/L, chromium (III) is 0.55 mg/L, chromium (IV) is

0.016 mg/L, nickel is .47 mg/L, copper is 0.013 mg/L, and for cyanide is 0.022 mg/L, assuming a water hardness calculation of 100 mg/L.

80. The CTR numeric limits are expressed as dissolved metal concentrations.

81. Discharges with pollutant levels that cause or contribute to an exceedance of the CTR criteria, the Basin Plan standards, and/or other applicable WQS in the Receiving Waters are violations of Receiving Water Limitation Section VI(A) of the Storm Water Permit.

82. The Storm Water Permit's Receiving Water Limitations prohibit storm water discharges from adversely impacting human health or the environment. *See* Storm Water Permit, Section VI(B).

83. Storm water discharges with pollutant levels that exceed levels known to adversely impact aquatic species and the environment are violations of Receiving Water Limitation Section VI(B) of the Storm Water Permit.

F. The Storm Water Permit's Storm Water Pollution Prevention Plan Requirements.

84. Dischargers must develop and implement a SWPPP prior to conducting, and in order to continue, industrial activities. Storm Water Permit, Sections I(I) (Finding 54), X(B). The SWPPP must meet all of the requirements of the Storm Water Permit. Storm Water Permit, Sections X(A)-(H); *See also* Storm Water Permit, Appendix 1. The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water and authorized non-storm water discharges from the facility. Storm Water Permit, Section X(G).

85. The SWPPP must identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges. Storm Water Permit, Section X(H). The SWPPP must include BMPs that achieve pollutant discharge reductions attainable via BAT and BCT. Storm Water Permit, Section I(D) (Finding 32), Section X(C).

86. The SWPPP must include: a narrative description and summary of all

1 industrial activity; potential sources of pollutants, and potential pollutants; a site map
2 indicating the storm water conveyance system, associated points of discharge, direction
3 of flow, areas of actual and potential pollutant contact, including the extent of pollution-
4 generating activities, nearby water bodies, and pollutants control measures; a description
5 of storm water management practices; a description of the BMPs to be implemented to
6 reduce or prevent pollutants in storm water discharges and authorized non-storm water
7 discharges; the identification and elimination of non-storm water discharges; the location
8 where significant materials are being shipped, stored, received, and handled, as well as the
9 typical quantities of such materials and the frequency with which they are handled; a
10 description of dust and particulate-generating activities; and an identification and
11 description of individuals and their current responsibilities for developing and
12 implementing the SWPPP. Storm Water Permit, Section X.

13 87. The objectives of the SWPPP are to identify and evaluate sources of
14 pollutants associated with industrial activities that may affect the quality of storm water
15 discharges, to identify and implement site-specific BMPs to prevent the exposure of
16 pollutants to storm water, and to reduce or prevent the discharge of polluted storm water
17 from industrial facilities. Storm Water Permit, Section X.

18 88. The Storm Water Permit requires the discharger to evaluate the SWPPP on
19 an annual basis and revise it as necessary to ensure compliance with the Storm Water
20 Permit. Storm Water Permit, Section X(A)-(B). The Storm Water Permit also requires that
21 the discharger conduct an annual comprehensive site compliance evaluation that includes
22 a review of all visual observation records, inspection reports and sampling and analysis
23 results, a visual inspection of all potential pollutant sources for evidence of, or the potential
24 for, pollutants entering the drainage system, a review and evaluation of all BMPs to
25 determine whether the BMPs are adequate, properly implemented and maintained, or
26 whether additional BMPs are needed, and a visual inspection of equipment needed to
27 implement the SWPPP. Storm Water Permit, Section X(B) and XV.

28 89. The SWPPP and site maps must be assessed annually and revised as

1 necessary to ensure accuracy and effectiveness. Storm Water Permit, Sections I(J)
2 (Finding 55), X(B)(1).

3 **G. The Storm Water Permit's Monitoring Implementation Program**
4 **Requirements.**

5 90. The Storm Water Permit requires permittees to develop and implement a
6 storm water Monitoring Implementation Program ("MIP") and include it in the SWPPP
7 prior to conducting, and in order to continue, industrial activities. Storm Water Permit,
8 Sections X(I) and XI.

9 91. The Storm Water Permit requires facility owners and/or operators to develop
10 and implement an adequate MIP that meets all of the requirements of the Storm Water
11 Permit. Storm Water Permit Sections X(I) and XI(A)-XI(D).

12 92. The objective of the MIP is to detect and measure the concentrations of
13 pollutants in a facility's discharge and to ensure compliance with the Storm Water
14 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations.
15 *See* Storm Water Permit, Section XI.

16 93. An adequate MIP ensures that BMPs are effectively reducing and/or
17 eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to
18 ensure compliance with the Storm Water Permit. *See id.*

19 94. The Storm Water Permit requires facility operators to monitor and sample
20 storm water discharges to ensure that the facility is complying with the terms of the Storm
21 Water Permit. Storm Water Permit, Section XI(B).

22 95. Section XI(A)(1) of the Storm Water Permit requires dischargers to conduct
23 monthly visual observations during dry weather of each drainage area. Monthly visual
24 observations must include observations of any non-storm water discharges, all outdoor
25 industrial equipment and activities, BMPs, and all potential sources of pollution.

26 96. Section XI(A)(2) of the Storm Water Permit requires dischargers to conduct
27 visual observations at the same time sampling occurs at a discharge location, and
28 document the presence of any floating and suspended materials, oil and grease,

1 discolorations, turbidity, odor in the discharge, and the source of any pollutants in storm
2 water discharges from the facility.

3 97. Dischargers are required to maintain records of observations, observation
4 dates, discharge locations observed, and responses taken to reduce or prevent pollutants
5 from contacting storm water discharges. *See* Storm Water Permit, Section XI(A)(3).

6 98. The Storm Water Permit requires dischargers to visually observe and collect
7 samples of storm water discharges from all locations where storm water is discharged.
8 Storm Water Permit Section XI(B)(4).

9 99. Section XI(B)(1) of the Storm Water Permit defines a Qualifying Storm
10 Event (“QSE”) as a precipitation event that produces a discharge for at least one drainage
11 area, and it is preceded by forty-eight (48) hours with no discharge from any drainage
12 area.

13 100. The Storm Water Permit requires dischargers in a compliance group, such as
14 the Facility, to collect and analyze storm water samples from at least one (1) QSE within
15 the first half of each reporting year (July 1 to December 31), and one (1) QSE within the
16 second half of each reporting year (January 1 to June 30), which must be analyzed for
17 TSS, pH, O&G and additional parameters identified on a facility-specific basis that serves
18 as indicators of the presence of all industrial pollutants identified in the pollutant source
19 assessment—in addition to those required under the Standard Industrial Classification
20 (“SIC”) code and related to TMDLs. Storm Water Permit, X(B)(3) and X(B)(6).

21 101. Table 1 of the Storm Water Permit requires dischargers with SIC code 3471
22 (electroplating, Plating, Polishing, Anodizing, and coloring) to analyze samples for zinc,
23 N+N, iron, and aluminum.

24 102. Section XI(B)(6)(c) of the Storm Water Permit requires dischargers to
25 analyze samples for pollutants associated with industrial operations.

26 103. Section XI(B)(6)(f) of the Storm Water Permit requires dischargers to
27 analyze additional parameters required by the Regional Board.

28 104. Section XI(B)(6)(e) of the Storm Water Permit also requires dischargers to

1 analyze storm water samples for additional applicable industrial parameters related to
2 receiving waters with 303(d) listed impairments, or approved TMDLs.

3 105. Section XI(B)(11) of the Storm Water Permit, among other requirements,
4 provides that permittees must submit all sampling and analytical results for all samples
5 via Storm Water Multiple Application & Report Tracking System (“SMARTS”) within
6 thirty (30) days of obtaining all results for each sampling event.

7 **H. The Storm Water Permit’s Exceedance Response Actions**
8 **Requirements.**

9 106. Under the Storm Water Permit, facility operators are required to perform
10 Exceedance Response Actions (“ERA”) as appropriate whenever sampling indicates NAL
11 exceedances.

12 107. An annual NAL exceedance occurs when the average of all the analytical
13 results for a parameter from samples taken within a reporting year exceeds the annual
14 NAL value for that parameter.

15 108. An instantaneous maximum NAL exceedance occurs when two (2) or more
16 analytical results from samples taken for any single parameter within a reporting year
17 exceed the instantaneous maximum NAL value or are outside of the instantaneous
18 maximum NAL range for pH. Storm Water Permit, Section XII(A).

19 109. Upon receiving NOI coverage, all permittees are deemed in “Baseline
20 status.” See Storm Water Permit, Section XII(B).

21 110. A permittee’s Baseline status for any given parameter changes to “Level 1
22 status” if sampling results indicate an NAL exceedance for that same parameter. *See* Storm
23 Water Permit, Section XII(C).

24 111. Level 1 status commences on July 1 following the reporting year during
25 which the exceedance(s) occurred. Storm Water Permit, Section XII(C). By October 1
26 following commencement of Level 1 status, permittees are required to: complete an
27 evaluation, with the assistance of a Qualified Industrial Stormwater Practitioner (“QISP”),
28 of the industrial pollutant sources at the facility that are or may be related to the NAL

1 exceedance(s); and identify in the evaluation the corresponding BMPs in the SWPPP and
2 any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances
3 and to comply with the requirements of Storm Water Permit. *See* Storm Water Permit,
4 Section XII(C)(1)(a)-(c).

5 112. Although the evaluation may focus on the drainage areas where the NAL
6 exceedance(s) occurred, all drainage areas shall be evaluated. *See* Storm Water Permit,
7 Section XII(C)(1)(c).

8 113. Based upon this Level 1 status evaluation, the permittee is required to, as
9 soon as practicable but no later than January 1 following commencement of Level 1 status,
10 revise the SWPPP as necessary and implement any additional BMPs identified in the
11 evaluation, certify and submit via SMARTS a Level 1 ERA Report prepared by a QISP
12 that includes a summary of the Level 1 ERA Evaluation and a detailed description of the
13 SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL.
14 *See* Storm Water Permit, Section XII(C)(2)(a)(i)-(ii).

15 114. The permittee in Level 1 status must also certify and submit via SMARTS
16 the QISP's identification number, name, and contact information (telephone number, e-
17 mail address) no later than January 1 following commencement of Level 1 status. *See*
18 Storm Water Permit, Section XII(C)(2)(a)(iii).

19 115. A permittee's Level 1 status for a parameter will return to Baseline status
20 once a Level 1 ERA Report has been completed, all identified additional BMPs have been
21 implemented, and results from four (4) consecutive QSEs that were sampled subsequent
22 to BMP implementation indicate no additional NAL exceedances for that parameter.
23 Storm Water Permit, Section XII(C)(2)(b).

24 116. A permittee's Level 1 status for any given parameter shall change to Level 2
25 status if sampling results indicate an NAL exceedance for that same parameter while the
26 discharger is in Level 1. Level 2 status commences on July 1 following the reporting year
27 during which the NAL exceedance(s) occurred. Storm Water Permit, Section XII(D).

28 117. A discharger in Level 2 status shall submit a Level 2 ERA Action Plan

1 prepared by a QISP that addresses each new Level 2 NAL exceedance by January 1
 2 following the reporting year during with the NAL exceedances occurred. On January 1 of
 3 the reporting year following the submittal of the Level 2 ERA Action Plan, a discharger
 4 shall certify and submit a Level 2 ERA Technical Report prepared by a QISP to SMARTS.
 5 Storm Water Permit, Section XII(D).

6 **I. The Storm Water Permit's Annual Reporting Requirements.**

7 118. Section XVI of the Storm Water Permit requires dischargers to submit an
 8 Annual Report to the Regional Board by July 15 of each year.

9 119. The Annual Report must include a Compliance Checklist that indicates
 10 whether a discharger has complied with all of the requirements of the Storm Water Permit,
 11 an explanation for, an explanation for any non-compliance of requirements within the
 12 reporting year, an identification, including page numbers and/or sections, of all revisions
 13 made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.
 14 *See* Storm Water Permit, Section XVI.

15 120. Annual Reports are certified by the legally responsible person under penalty
 16 of perjury.

17 **V. FACTUAL BACKGROUND**

18 **A. The Facility's Storm Water Permit Coverage.**

19 121. Plaintiff is informed and believes, and thereon alleges, that on or about June
 20 30, 2015, Hixson obtained Storm Water Permit coverage for the Facility by submitting an
 21 NOI to the State Board.

22 122. Plaintiff is informed and believes, and thereon alleges, that the Facility's NOI
 23 identifies the operator of the facility located at 829 Production Place, Newport Beach, CA
 24 92663 (the "Hixson NOI") as Hixson Metal Finishing.

25 123. Plaintiff is informed and believes, and thereon alleges, that the Hixson NOI
 26 lists the Facility as 105,600 square feet in size, with at least 20,000 square feet of industrial
 27 area exposed to storm water.

28 124. Plaintiff is informed and believes, and thereon alleges, that the Waste

1 Discharger Identification (“WDID”) number listed on the Hixson NOI is 8 30I010178.

2 125. Plaintiff is informed and believes, and thereon alleges, that the Hixson NOI
3 indicates that 90% of the Hixson facility, including rooftops, is impervious.

4 126. Plaintiff is informed and believes, and thereon alleges, that the Facility’s
5 operating hours, per the Facility SWPPP, are from 6:00 AM to 11:00 PM and six (6) days
6 per week.

7 127. Plaintiff is informed and believes, and thereon alleges, that the NOI identifies
8 the operator of the portion of the facility located at 816 Production Place, Newport Beach,
9 CA 92663 (the “Hixson North NOI”) as Hixson Metal Finishing North.

10 128. Plaintiff is informed and believes, and thereon alleges, that the Hixson North
11 NOI lists the facility as 10,400 square feet in size, with 5,400 square feet of industrial area
12 exposed to storm water.

13 129. Plaintiff is informed and believes, and thereon alleges, that the Hixson North
14 WDID number is 8 30I025874.

15 130. Plaintiff is informed and believes, and thereon alleges, that the Hixson North
16 NOI indicates that 100% of the Hixson North Facility, including rooftops, is impervious.

17 131. Plaintiff is informed and believes, and thereon alleges, that both NOIs list
18 Newport Bay as the Facility’s receiving water.

19 132. SMARTS lists the Facility’s coverage under the Storm Water Permit as
20 “Active.”

21 133. Both the Hixson NOI and the Hixson North NOI lists the SIC code for the
22 Facility as 3471 (Electroplating, Plating, Polishing, Anodizing, and Coloring).

23 134. Hixson, as the Facility’s Owner and Operator, must obtain Storm Water
24 Permit coverage for the entire Facility. *See* Storm Water Permit Attachment A, ¶2; Storm
25 Water Permit, Section XVII(E)(1).

26 135. Plaintiff is informed and believes, and thereon alleges, that Hixson is required
27 to sample storm water for TSS, O&G, pH, zinc, nitrate + nitrite nitrogen (“N+N”), iron,
28 and aluminum based on the SIC code requirement. *See* Storm Water Permit, Section

1 XI(B)(6)(d).

2 136. Plaintiff is informed and believes, and thereon alleges, Hixson is required to
3 sample storm water for copper, chromium, including hexavalent chromium, cadmium, and
4 lead based on the Hixson's pollutant source assessment. *See* Storm Water Permit, Section
5 XI(B)(6)(c) and (e).

6 **B. Industrial Activities and Pollutant Sources at the Facility.**

7 137. Plaintiff is informed and believes, and thereon alleges, that the Facility's
8 primary industrial purpose metal finishing servicing the electronics, military, automotive,
9 aviation, and construction industries.

10 138. Plaintiff is informed and believes, and thereon alleges, that the primary
11 industrial processes at the Facility include anodizing, electroplating, painting, dyeing,
12 vacuum metallizing, coating, sandblasting, and non-destructive testing.

13 139. Plaintiff is informed and believes, and thereon alleges, that industrial
14 activities at the Facility include testing area(s), anodizing area(s), paint booths, and storage
15 areas.

16 140. Plaintiff is informed and believes, and thereon alleges, that the Facility's
17 ancillary operations include machine maintenance, housekeeping, sales, and
18 administrative activities.

19 141. Plaintiff is informed and believes, and thereon alleges, that pollutants have
20 been and continue to be tracked throughout the Facility by vehicles and machinery, which
21 is tracked to areas of exposure and then outside of the Facility.

22 142. Plaintiff is informed and believes, and thereon alleges, that pollutants that are
23 tracked outside the Facility enter the municipal storm drain and are carried to the
24 Receiving Waters by non-storm water discharges, such as irrigation runoff or other means.

25 143. Plaintiff is informed and believes, and thereon alleges, that the areas of
26 industrial activity and industrial activities at the Facility are sources of pollutants.

27 144. Plaintiff is informed and believes, and thereon alleges, Hixson, as the
28 Facility's Owner and Operator, has not properly developed and/or implemented the

1 required BMPs to address the pollutant sources and associated pollutants at the Facility.

2 145. BMPs are necessary at the Facility to prevent the exposure of pollutants to
3 precipitation and the subsequent discharge of polluted storm water from the Facility
4 during rain events.

5 146. Plaintiff is informed and believes, and thereon alleges, Hixson's failure to
6 develop and/or implement required BMPs results in the exposure of pollutants associated
7 with their industrial activities to precipitation, and results in the Facility's discharge of
8 polluted storm water which flows into the Municipal Separate Storm Sewer System
9 ("MS4"), and then into Newport Bay in violation of the Storm Water Permit and the Clean
10 Water Act.

11 147. Plaintiff is informed and believes, and thereon alleges, that these illegal
12 discharges of polluted storm water negatively impact Plaintiff's members' use and
13 enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and
14 by posing risks to human health and aquatic life.

15 **C. The Facility's Storm Water Flow, Sampling Points, and Discharges to**
16 **the Receiving Waters.**

17 148. Plaintiff is informed and believes, and thereon alleges, that the Facility
18 contains roof drainage and sheet flow runoff that takes place in paved parking areas and
19 driveways between the Facility buildings.

20 149. Plaintiff is informed and believes, and thereon alleges, that the Facility has
21 at least six discharge points.

22 150. Hixson reports one discharge location at 816 Production Place and five
23 discharge locations between 817-861 Production Place.

24 151. Plaintiff is informed and believes, and thereon alleges, that the Facility's
25 discharges drain to Production Place along concrete swales and driveways located
26 between the buildings, which discharge into the concrete gutter of the street.

27 152. Plaintiff is informed and believes, and thereon alleges, that discharges of
28 pollutants from the Facility enter into the MS4 and into Newport Bay.

1 153. Plaintiff is informed and believes, and thereon alleges, that Newport Bay is a
2 navigable water of the United States.

3 154. Without a Representative Sampling Reduction plan, the Storm Water Permit
4 requires permittees to collect samples from each drainage area at all discharge locations.
5 *See* Storm Water Permit, Section XI.B.4.

6 **D. Defendants' Violations of the Storm Water Permit's Receiving Water**
7 **Limitations.**

8 155. Plaintiff is informed and believes, and thereon alleges, that the Facility's
9 discharges include concentrations of metals and other pollutants that cause exceedances
10 of the Basin Plan's narrative WQS.

11 156. Plaintiff is informed and believes, and thereon alleges, that storm water
12 discharges from the Facility contain elevated concentrations of metals and other
13 pollutants, which adversely impact human health and the environment.

14 157. Plaintiff is informed and believes, and thereon alleges, that each time polluted
15 storm water is discharged from the Facility, Hixson violates the Basin Plan's narrative
16 WQS.

17 158. Plaintiff is informed and believes, and thereon alleges, that storm water
18 samples collected by Plaintiff demonstrate that discharges from the Facility contain
19 concentrations of zinc that cause or contribute to a violation of an applicable WQS in the
20 CTR. For example, the storm water sample collected by Plaintiff on March 3, 2021
21 contained zinc at .42 mg/L, which exceeds the CTR value of .12 mg/L.

22 159. Plaintiff is informed and believes, and thereon alleges, that each time polluted
23 storm water discharges from the Facility in excess of the applicable CTR value, Hixson
24 violates the numeric WQS in the CTR and, by extension, the CWA.

25 160. Plaintiff is informed and believes, and thereon alleges, that storm water
26 samples collected at the Facility demonstrate that discharges from the Facility contain pH
27 values that cause or contribute to a violation of the applicable WQS in the Basin Plan
28 which is 7.0 to 8.6 standard units for bays and estuaries.

1 161. Plaintiff is informed and believes, and thereon alleges, that storm water
2 samples collected by both Hixson and Coastkeeper demonstrate pH levels below the Basin
3 Plan's receiving water limitations.

4 162. Plaintiff is informed and believes, and thereon alleges, that storm water
5 samples collected by Hixson on March 22, 2018 had a pH of 6.75 standard units.

6 163. Plaintiff is informed and believes, and thereon alleges, that storm water
7 samples collected by Coastkeeper on December 14, 2021, had a pH levels of 6.86 or less
8 for all six discharge locations.

9 164. Plaintiff is informed and believes, and thereon alleges, that each time polluted
10 storm water discharges from the Facility with a pH below 7.0 standard units or above 8.6
11 standard units, Hixson violates the numeric WQS in the Basin Plan and, by extension, the
12 CWA.

13 165. Plaintiff is informed and believes, and thereon alleges, that the Facility's
14 discharge violations are ongoing and will continue every time contaminated storm water
15 is discharged from the Facility in violation of the Storm Water Permit.

16 166. Each time discharges of storm water from the Facility cause or contribute to
17 a violation of an applicable WQS is a separate and distinct violation of Receiving Water
18 Limitation VI(A) of the Storm Water Permit and Section 301(a) of the Clean Water Act,
19 33 U.S.C. § 1311(a).

20 167. Each time discharges from the Facility adversely impact human health or the
21 environment is a separate and distinct violation of Receiving Water Limitation VI(B) of
22 the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

23 **E. Defendants' Violations of the Storm Water Permit's Technology Based**
24 **Effluent Limitations.**

25 168. Plaintiff is informed and believes, and thereon alleges, that BMPs that
26 achieve BAT/BCT have not been implemented at the Facility.

27 169. Plaintiff is informed and believes, and thereon alleges, that storm water
28 discharges from the Facility contain concentrations of pollutants associated with the

1 Facility's industrial activities above benchmark levels established by the EPA and
2 incorporated into the Storm Water Permit.

3 170. Plaintiff is informed and believes, and thereon alleges, that storm water
4 discharges from the Facility contain concentrations of pollutants with exceedances of
5 NALs for Aluminum, N+N, copper, cadmium, and zinc.

6 171. Plaintiff is informed and believes, and thereon alleges, that for the 2016-2017
7 reporting year, the Facility exceeded NALs for copper and zinc.

8 172. Plaintiff is informed and believes, and thereon alleges, that for the 2017-2018
9 reporting year, the Facility exceeded NALs for aluminum and N+N.

10 173. Plaintiff is informed and believes, and thereon alleges, that for the 2018-2019
11 reporting year the Facility did not report any samples.

12 174. Plaintiff is informed and believes, and thereon alleges, that for the 2019-2020
13 reporting year the Facility did not report any samples.

14 175. Plaintiff is informed and believes, and thereon alleges, that for the 2020-2021
15 reporting year, the Facility exceeded NALs for cadmium, zinc, and N+N.

16 176. Plaintiff is informed and believes, and thereon alleges, that the ongoing
17 exceedances of NALs demonstrate that Hixson has failed and continues to fail to develop
18 and/or implement BMPs at the Facility as required to achieve compliance with the
19 BAT/BCT standards in order to prevent the exposure of pollutants to storm water and to
20 prevent discharges of polluted storm water from the Facility.

21 177. Plaintiff is informed and believes, and thereon alleges, that the technology
22 based effluent limitations of the Storm Water Permit are violated each day that BMPs
23 achieving these technology-based effluent limitations are not in place at the Facility.

24 178. Each day that Hixson has failed to develop and implement BAT and BCT at
25 the Facility in violation of the Storm Water Permit is a separate and distinct violation of
26 the Clean Water Act.

27 179. Hixson has been in violation of the BAT and BCT requirements at the
28 Facility every day since at least March 6, 2017.

1 180. Defendants are liable for daily violations of the Storm Water Permit's
2 technology based effluent limitations, every day since at least March 6, 2017.

3 **F. Defendants' Violations of the Storm Water Permit's Numeric Effluent**
4 **Limitations**

5 181. Plaintiff is informed and believes, and thereon alleges, that the
6 Facility has exceeded the NELs for copper and zinc during the 2020-2021 reporting
7 year.

8 182. Storm water samples collected by Hixson on March 3, 2021 demonstrate
9 copper levels at 0.012 mg/L which exceeds the NEL limitation of 0.00578 mg/L for
10 copper.

11 183. Plaintiff is informed and believes, and thereon alleges, that storm water
12 samples collected at various Facility discharge locations by Plaintiff on March 3, 2021
13 demonstrate copper concentrations at 0.011 mg/L, 0.032 mg/L, 1.2 mg/L and 0.031
14 mg/L, which exceed the NEL limitation of 0.00578 mg/L for copper.

15 184. Plaintiff is informed and believes, and thereon alleges, that storm water
16 samples collected at various Facility discharge locations by Plaintiff on March 3, 2021,
17 demonstrate concentrations of zinc at 0.42 mg/L, 0.61 mg/L, and .35 mg/L all of which
18 exceed the NEL limitation of 0.095 mg/L for zinc.

19 185. Plaintiff is informed and believes, and thereon alleges, that storm water
20 samples collected at various Facility discharge locations by Plaintiff on December 14,
21 2021, demonstrate copper concentrations at 0.22 mg/L, 0.056 mg/L, 0.13 mg/L, 0.035
22 mg/L, 0.049 mg/L, and 0.025 mg/L, which exceed the NEL limitation of 0.00578 mg/L
23 for copper.

24 186. Plaintiff is informed and believes, and thereon alleges, that storm water
25 samples collected at various Facility discharge locations by Plaintiff on December 14,
26 2021, demonstrate concentrations of zinc at 0.7 mg/L, 0.92 mg/L, 0.46 mg/L, 0.3 mg/L,
27 and 0.23 mg/L, all of which exceed the NEL limitation of 0.095 mg/L for zinc.

28 187. Plaintiff is informed and believes, and thereon alleges, that storm water

1 samples collected at various Facility discharge locations by Plaintiff on March 28, 2022,
2 demonstrate concentrations of copper at 0.024 mg/L, 0.038 mg/L, 0.17 mg/L, 0.054
3 mg/L, 0.058 mg/L, and 0.036 mg/L. Concentrations of zinc were at 0.83 mg/L, 0.56
4 mg/L, 0.95 mg/L, 0.056 mg/L, 0.37 mg/L, and 0.3 mg/L.

5 188. Plaintiff is informed and believes, and thereon alleges, that based on the
6 storm water sample results described in paragraphs 181-187 herein, the Facility
7 exceeded the instantaneous maximum NEL for copper and zinc in violation of Storm
8 Water Permit V(C)(1).

9 189. Plaintiff is informed and believes, and thereon alleges, that based on the
10 storm water sample results described in paragraphs 181-187 herein, the Facility
11 exceeded the instantaneous maximum NEL for zinc in violation of Storm Water Permit
12 V(C)(1).

13 190. Plaintiff is informed and believes, and thereon alleges, that NEL
14 violations occur any time there are two exceedances of an NEL in a single reporting
15 year.

16 191. Each time Hixson has exceeded the Storm Water Permit's numeric effluent
17 limitations is a separate and distinct violation of the Clean Water Act.

18 192. Hixson has been in violation of the Storm Water Permit's numeric effluent
19 limitations since at least March 3, 2021.

20 **G. Defendants' Violations of the Storm Water Permit's SWPPP**
21 **Requirements.**

22 193. The Facility's SWPPP associated with the Hixson North NOI site is publicly
23 available via the SMARTS database and is dated May 1, 2019.

24 194. The Facility's SWPPP for the Hixson site is publicly available via the
25 SMARTS database and is dated May 1, 2019.

26 195. Plaintiff is informed and believes, and thereon alleges, that the identical
27 document has been uploaded for both the Hixson North and the Hixson sites and serves
28 as the singular SWPPP for both sites.

1 196. Plaintiff is informed and believes, and thereon alleges, that Hixson, as the
2 Facility's Owner and Operator, has failed and continues to fail to adequately develop,
3 implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Storm
4 Water Permit.

5 197. Plaintiff is informed and believes, and thereon alleges, that the SWPPP for
6 the Facility fails to describe the responsibilities, duties, and activities of each SWPPP team
7 member in accordance with the permit in violation of Storm Water Permit, Section
8 X(D)(1).

9 198. Plaintiff is informed and believes, and thereon alleges, that the Facility's
10 SWPPP does not adequately describe, at a minimum, the Facility's (i) industrial processes,
11 (ii) all dust and particulate generating activities, (iii) areas where spills and leaks can
12 occur, (iv) evaluation of non-storm water discharges, and (v) BMP descriptions, all in
13 violation of Storm Water Permit, Section X.

14 199. Plaintiff is informed and believes, and thereon alleges, that a site map ("Site
15 Map") depicting both the Hixson North and the Hixon sites was uploaded to SMARTS on
16 July 9, 2020, and that the Site Map is a map of the Facility submitted pursuant to Section
17 II(B)(3)(a) of the Storm Water Permit.

18 200. Plaintiff is informed and believes, and thereon alleges, that the Facility's site
19 map is also out of compliance with the Storm Water Permit by failing to identify (i)
20 drainage areas, (ii) storm water collection and conveyance systems, (iii) structural control
21 measures, (iv) impervious areas, (v) municipal storm drain inlets, and (vi) other areas and
22 items as required by the Storm Water Permit, Section X(E).

23 201. Plaintiff is informed and believes, and thereon alleges, that the list of
24 industrial materials contained within the SWPPP does not sufficiently depict locations
25 where each material is stored, received, shipped, and handled as required by the Storm
26 Water Permit, Section X(F).

27 202. Plaintiff is informed and believes, and thereon alleges, that Facility's SWPPP
28 fails to describe the typical quantities and handling frequency of each industrial material

1 as required by the permit.

2 203. Plaintiff is informed and believes, and thereon alleges, that Hixson, as the
3 Facility's Owner and Operator, has failed to adequately revise the SWPPP in response to
4 ongoing high concentrations of pollutants.

5 204. Each day the Facility has operated with an inadequately developed,
6 implemented, and/or improperly revised SWPPP is a separate and distinct violation of the
7 Storm Water Permit and the Clean Water Act.

8 205. Plaintiff is informed and believes, and thereon alleges, that Hixson, as the
9 Facility's Owner and Operator, has been in daily and continuous violation of the Storm
10 Water Permit's SWPPP requirements since at least March 6, 2017.

11 **H. Defendants' Violations of the Storm Water Permit's Monitoring**
12 **Implementation Plan Requirements.**

13 206. Plaintiff is informed and believes, and thereon alleges, that Hixson has been
14 conducting, and continues to conduct, operations at the Facility with an inadequately
15 developed, implemented, and/or improperly revised MIP, in violation of the MIP
16 requirements of the Storm Water Permit.

17 207. Plaintiff is informed and believes, and thereon alleges, that Hixson has failed
18 and continues to fail to collect storm water discharge samples as required pursuant to
19 Section XI(B)(3) of the Storm Water Permit, which requires dischargers to collect and
20 analyze storm water samples from two QSEs within the first half of each reporting year
21 and two QSEs within the second half of each reporting year, unless the discharger is part
22 of a compliance group. Hixson, as a compliance group member is required to collect storm
23 water samples from one QSEs within the first half of each reporting year and one QSE
24 within the second half of each reporting year

25 208. Plaintiff is informed and believes, and thereon alleges, that in the 2019-2020
26 reporting year, Hixson failed to collect a single storm water sample.

27 209. Plaintiff is informed and believes, and thereon alleges, that in the 2019-2020
28 reporting year, Hixson claimed "there were no qualifying storm water events this reporting

1 year.”

2 210. Plaintiff is informed and believes, and thereon alleges that Hixson collected
3 one sample in the 2020-2021 reporting year under WDID 8 30I0101178 (Hixson),
4 claiming that the shortfall in sampling was due to “lack of QSE’s.”

5 211. Plaintiff is informed and believes, and thereon alleges, that in the 2020-2021
6 Hixson collected zero samples under WDID 8 30I025874 (Hixson North) “due to lack of
7 stormwater events.”

8 212. Plaintiff is informed and believes, and thereon alleges, Hixson collected one
9 sample in each of 2016-2017 and 2017-2018 reporting years, and in 2018-2019, collected
10 one sample under WDID 8 30I0101178 (Hixson) but none under WDID 8 30I025874
11 (Hixson North).

12 213. Plaintiff is informed and believes, and thereon alleges, that the Facility has
13 not collected the required number of water samples during QSEs in any reporting year
14 within the relevant period.

15 214. Plaintiff is informed and believes, and thereon alleges, that of the storm water
16 samples that were collected, Hixson failed to timely upload the results to SMARTS within
17 thirty (30) days of receipt, in violation of Section XI(B) of the Storm Water Permit.

18 215. Plaintiff is informed and believes, and thereon alleges, that the Facility’s
19 reporting erroneously indicates that Hixson was unable to collect the required samples
20 because there were not enough rain events.

21 216. Climatological data obtained from the National Oceanic and Atmospheric
22 Administration (“NOAA”) demonstrates that there were additional opportunities to
23 sample significant rain events during each reporting year. *See* Ex. 2 of Notice Letter
24 attached hereto as Ex. A.

25 217. Coastkeeper representatives collected a storm water sample from the Facility
26 on March 3, 2021, and December 14, 2021 which contains an exceedance of the CTR limit
27 for dissolved cadmium, a parameter Hixson fails to include in its sampling.

28 218. Hixson’s failure to conduct sampling and monitoring as required by the

1 Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise a
2 MIP that complies with the requirements of Section XI of the Storm Water Permit.

3 219. Plaintiff is informed and believes, and thereon alleges, that in violation of
4 Storm Water Permit Sections X(G)(2) and XI(B)(6)(c), the Hixson is not sampling for all
5 pollutants present in its storm water discharge.

6 220. Plaintiff is informed and believes, and thereon alleges, that based upon the
7 failure to collect the required number of samples, Hixson has failed and continues to fail
8 to conduct and record adequate visual observations of storm water discharges since the
9 Facility obtained permit coverage on or about June 30, 2015, in violation of Storm Water
10 Permit, Section XI(A)(2).

11 221. Plaintiff is informed and believes, and thereon alleges, that Hixson has failed
12 and continues to fail to conduct and record all required monthly dry weather visual
13 observations at the Facility.

14 222. Plaintiff is informed and believes, and thereon alleges, that Hixson has been
15 in ongoing and continuous violation of the Storm Water Permit's MIP requirements since
16 at least March 6, 2017.

17 223. Plaintiff is informed and believes, and thereon alleges, that the Defendants
18 are in violation of the Storm Water Permit and the Clean Water Act because they have
19 failed and continue to fail to adequately develop, implement, and/or revise their MIP in
20 violation of the Storm Water Permit's MIP requirements.

21 **I. Defendants' Violations of the Storm Water Permit's Exceedance**
22 **Response Requirements.**

23 224. Plaintiff is informed and believes, and thereon alleges, that based on sample
24 results submitted by Hixson, the Facility triggered Level 1 status during the 2016-2017
25 reporting year for copper.

26 225. Plaintiff is informed and believes, and thereon alleges, that Hixson was
27 required to (i) complete a Level 1 ERA Evaluation by October 1, 2017, (ii) prepare and
28 submit a Level 1 ERA Report to SMARTS by January 1, 2018, and (iii) amend the SWPPP

1 accordingly with revisions uploaded to SMARTS by January 1, 2018.

2 226. Plaintiff is informed and believes, and thereon alleges, that Hixson uploaded
3 an inadequate Level 1 Report on December 14, 2017 and inadequate SWPPP revisions on
4 January 29, 2018, after the January 1, 2018 deadline.

5 227. Plaintiff is informed and believes, and thereon alleges, that the sole
6 modification to Hixson's untimely SWPPP revisions uploaded on January 29 was, "ADD
7 MOPPING!"

8 228. Plaintiff is informed and believes, and thereon alleges, that the sole
9 modification to Hixson's untimely SWPPP to "ADD MOPPING!" does not comply with
10 the substantive requirements of the ERA Level 1 process in the Storm Water Permit, in
11 violation of the Permit.

12 229. Plaintiff is informed and believes, and thereon alleges, that sampling reported
13 by Hixson during the 2017-2018 reporting year demonstrated NAL exceedances for
14 aluminum and N+N, triggering Level 1 ERA status for those parameters.

15 230. Plaintiff is informed and believes, and thereon alleges, that Hixson uploaded
16 a Level 1 Report addressing the aluminum and N+N exceedances on December 20, 2018
17 that failed to honestly evaluate the pollutant problems, suggesting minor housekeeping
18 modifications alone, which does not comply with the substantive requirements of the ERA
19 Level 1 process in the Storm Water Permit, in violation of the Permit.

20 231. Plaintiff is informed and believes, and thereon alleges, that Hixson untimely
21 submitted an inadequate SWPPP revision on July 8, 2019 required of the Level 1 ERA
22 status for aluminum and N+N detailed in the December 20, 2018 Report.

23 232. Plaintiff is informed and believes, and thereon alleges, that the Hixson has
24 failed to implement the BMPs described in its Level 1 ERA documents.

25 233. Sampling data obtained by Plaintiff indicate continued, high exceedances of
26 copper and N+N, amongst other parameters, indicating a failure to comply with the Storm
27 Water Permit's requirements to utilize an iterative process for determining and improving
28 BMPs.

1 234. Plaintiff is informed and believes, and thereon alleges, that Hixson, as the
2 Facility's Owner and Operator, has failed and continues to fail to take Exceedance
3 Response Actions as required by Storm Water Permit Section XII.

4 235. Plaintiff is informed and believes, and thereon alleges, that Hixson has been
5 in daily and continuous violation of the Storm Water Permit Exceedance Response
6 Actions requirements since at least March 6, 2017.

7 236. Plaintiff is informed and believes, and thereon alleges, that every day the
8 Facility operates without timely submitting and implementing all required ERA
9 documentation is a separate and distinct violation of the Storm Water Permit and the Clean
10 Water Act, for which Defendants are liable.

11 **J. Defendants' Failure To Comply With The Storm Water Permit's**
12 **Reporting Requirements.**

13 237. Plaintiff is informed and believes, and thereon alleges, that Hixson has failed
14 and continues to fail to submit Annual Reports that comply with the Storm Water Permit's
15 reporting requirements.

16 238. Plaintiff is informed and believes, and thereon alleges, that the 2017-2018,
17 2019-2020, and 2020-2021 Annual Reports submitted for WDID 8 30I010178 by Hixson
18 certify 4 discharge locations on site when the Facility's Site Maps indicate 5 discharge
19 locations.

20 239. Plaintiff is informed and believes, and thereon alleges, that the 2019-2020
21 and 2020-2021 Annual Reports submitted for both WDID 8 30I010178 and WDID 8
22 30NEC002934 erroneously indicate the Facility has reduced sampling frequency in
23 accordance with Section XI(C)(7) of the Permit when the Facility remains ineligible for
24 this reduction.

25 240. Plaintiff is informed and believes, and thereon alleges, that each of Hixson's
26 Annual Reports falsely attributes lack of sampling to lack of rain.

27 241. Plaintiff is informed and believes, and thereon alleges, that the Facility-
28 prepared rain logs are inaccurate and conflict with NOAA rain data and documented

1 Coastkeeper observations.

2 242. Plaintiff is informed and believes, and thereon alleges, that based on
3 climatological data obtained from NOAA, there were additional opportunities to sample
4 significant rain events during each of the reporting years. *See* Ex. 2 of Notice Letter
5 attached hereto as Ex. A.

6 243. Plaintiff is informed and believes, and thereon alleges, that when Hixson
7 sampled its storm water, sampling results were uploaded late.

8 244. Plaintiff is informed and believes, and thereon alleges, that the Facility
9 erroneously certified that all of the information submitted in the Annual Reports was true
10 and correct despite the factual deficiencies detailed in paragraphs 237-243.

11 245. Plaintiff is informed and believes, and thereon alleges, that Hixson has
12 submitted inaccurate Annual Reports which fail to comply with the Storm Water Permit,
13 and as a result, Defendants are in daily violation of the Storm Water Permit.

14 246. Plaintiff is informed and believes, and thereon alleges, that Hixson has been
15 in daily and continuous violation of the Storm Water Permit's annual reporting
16 requirements every day since at least July 2017.

17 247. Every day Hixson conducts operations at the Facility without reporting as
18 required by the Storm Water Permit is a separate and distinct violation of the Storm Water
19 Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a).

20 **VI. CLAIMS FOR RELIEF**

21 **FIRST CAUSE OF ACTION**

22 **Violation of Section 301(a) of the Clean Water Act by Discharging Contaminated** 23 **Storm Water in Violation of the Storm Water Permit's Technology Based Effluent** 24 **Limitations.**

25 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

26 248. Plaintiff incorporates the allegations contained in the above paragraphs as
27 though fully set forth herein.

28 249. Plaintiff is informed and believes, and thereon alleges, that Hixson failed and

1 continue to fail to reduce or prevent pollutants associated with industrial activities at the
2 Facility from discharging from the Facility through implementation of BMPs that achieve
3 BAT/BCT.

4 250. Hixson's failure to develop and/or implement BMPs that achieve the
5 pollutant discharge reductions attainable via BAT or BCT at the Facility is a daily
6 violation of the Storm Water Permit and the CWA. Storm Water Permit, Section I(D)
7 (Finding 32), Effluent Limitation V(A); 33 U.S.C. § 1311(b).

8 251. Hixson violated, violates and will continue to violate the Storm Water Permit
9 Technology Based Effluent Limitations each day that the Facility is not implementing
10 BMPs that achieve BAT/BCT standards for discharges of pollutants to waters of the
11 United States from the Facility.

12 252. Plaintiff is informed and believes, and thereon alleges, that Defendant FPC
13 and Defendant Trustee each have lease agreements with Hixson that require compliance
14 with all applicable laws and regulations and other provisions to inspect the property,
15 giving them knowledge and control over the errors and omissions giving rise to the
16 violations alleged herein, and are consequently liable parties under the Clean Water Act.

17 253. Plaintiff is informed and believes, and thereon alleges, that Defendants
18 violated the Effluent Limitations of the Storm Water Permit and the Clean Water Act
19 within the applicable statute of limitations, and such violations are ongoing and
20 continuous.

21 254. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts
22 and omissions described herein constitute violations of individual terms of the Storm
23 Water Permit, compliance with which is required to lawfully discharge pollutants to
24 waters of the United States.

25 255. Plaintiff alleges that its members have been harmed by Defendants' acts and
26 omissions described herein and have standing to bring this suit.

27 256. Each and every violation of the Storm Water Permit Effluent Limitations is
28 a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

1 257. By committing the acts and omissions alleged above, Defendants are subject
 2 to an assessment of civil penalties for each and every violation of the CWA occurring
 3 from March 6, 2017 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33
 4 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

5 258. An action for injunctive relief is authorized by CWA Section 505(a),
 6 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
 7 would irreparably harm Plaintiff and the citizens of the State of California, for which harm
 8 Plaintiff has no plain, speedy, or adequate remedy at law.

9 259. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
 10 an actual controversy exists as to the rights and other legal relations of the Parties.

11 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
 12 hereafter.

13 **SECOND CAUSE OF ACTION**

14 **Violation of Section 301(a) of the Clean Water Act by Discharging Contaminated** 15 **Storm Water in Violation of the Storm Water Permit's Numeric Effluent** 16 **Limitations.**

17 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

18 260. Plaintiff incorporates the allegations contained in the above paragraphs
 19 as though fully set forth herein.

20 261. Plaintiff is informed and believes, and thereon alleges, that Hixson
 21 failed and continues to fail to comply with the Storm Water Permit's Numeric Effluent
 22 Limitations.

23 262. Defendants violated, violate, and will continue to violate the Storm Water
 24 Permit's Numeric Effluent Limitations each day that storm water discharges from the
 25 Facility in excess of those limitations. Storm Water Permit, Section V(C).

26 263. Plaintiff is informed and believes, and thereon alleges, that Defendant FPC
 27 and Defendant Trustee each have lease agreements with Hixson that require compliance
 28 with all applicable laws and regulations and other provisions to inspect the property,

1 giving them knowledge and control over the errors and omissions giving rise to the
2 violations alleged herein, and are consequently liable parties under the Clean Water Act.

3 264. Plaintiff is informed and believes, and thereon alleges, that Defendants
4 violated the Effluent Limitations of the Storm Water Permit and the Clean Water Act
5 within the applicable statute of limitations, and such violations are ongoing and
6 continuous.

7 265. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts
8 and omissions described herein constitute violations of individual terms of the Storm
9 Water Permit, compliance with which is required to lawfully discharge pollutants to
10 waters of the United States.

11 266. Plaintiff alleges that its members have been harmed by Defendants' acts and
12 omissions described herein and have standing to bring this suit.

13 267. Each and every violation of the Storm Water Permit Effluent Limitations is
14 a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

15 268. By committing the acts and omissions alleged above, Defendants are subject
16 to an assessment of civil penalties for each and every violation of the CWA occurring
17 from July 1, 2020 to the present, pursuant to Sections 309(d) and 505 of the CWA, 33
18 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

19 269. An action for injunctive relief is authorized by CWA Section 505(a),
20 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above
21 would irreparably harm Plaintiff and the citizens of the State of California, for which harm
22 Plaintiff has no plain, speedy, or adequate remedy at law.

23 270. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
24 an actual controversy exists as to the rights and other legal relations of the Parties.

25 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth hereafter.

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THIRD CAUSE OF ACTION

Defendants' Discharges of Contaminated Storm Water in Violation of Storm Water Permit Receiving Water Limitations and the Clean Water Act.

33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)

271. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

272. Plaintiff is informed and believes, and thereon alleges, within the applicable statute of limitations, that discharges of storm water containing levels of pollutants that adversely impact human health and/or the environment occur each time storm water discharges from the Facility.

273. Plaintiff is informed and believes, and thereon alleges that, within the applicable statute of limitations, storm water containing levels of pollutants that cause or contribute to exceedances of water quality standards has and continues to be discharged each time storm water discharges from the Facility.

274. Plaintiff is informed and believes, and thereon alleges, that Defendant FPC and Trustee each have lease agreements with Hixson that require compliance with all applicable laws and regulations and other provisions to inspect the property, giving them knowledge and control over the errors and omissions giving rise to the violations alleged herein, and are consequently liable parties under the Clean Water Act.

275. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts and omissions described herein constitute violations of individual terms of the Storm Water Permit, compliance with which is required to lawfully discharge pollutants to waters of the United States.

276. Plaintiff alleges that its members have been harmed by Defendants' acts and omissions described herein and have standing to bring this suit.

277. Defendants violated, violate and will continue to violate the Storm Water Permit Receiving Water Limitations each and every time storm water containing levels of pollutants that adversely impact human health and/or the environment, and that cause or

1 contribute to exceedances of WQS, discharges from the Facility.

2 278. Plaintiff is informed and believes, and thereon alleges, that Defendants have
3 and continue to violate the Receiving Water Limitations of the Storm Water Permit and
4 the CWA within the applicable statute of limitations, and that such violations are ongoing
5 and continuous.

6 279. Each and every violation, within the applicable statute of limitations, of the
7 Storm Water Permit Receiving Water Limitations is a separate and distinct violation of
8 Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

9 280. By committing the acts and omissions alleged above, Defendants are subject
10 to an assessment of civil penalties for each and every violation of the CWA occurring
11 from March 6, 2017, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33
12 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

13 281. An action for injunctive relief under the Clean Water Act is authorized by
14 Section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
15 alleged above would irreparably harm Plaintiff and the citizens of the State of California,
16 for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

17 282. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
18 an actual controversy exists as to the rights and other legal relations of the Parties.

19 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth
20 hereafter.

21 **FOURTH CAUSE OF ACTION**

22 **Defendants' Failure to Adequately Develop, Implement, and/or Revise a Storm** 23 **Water Pollution Prevention Plan in Violation of the Storm Water Permit and the** 24 **Clean Water Act.**

25 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

26 283. Plaintiff incorporates the allegations contained in the above paragraphs as
27 though fully set forth herein.

28 284. Plaintiff is informed and believes, and thereon alleges, within the applicable

1 statute of limitations, that Hixson has failed and continues to fail to develop an adequate
2 SWPPP for the Facility, in violation of the Storm Water Permit.

3 285. Plaintiff is informed and believes, and thereon alleges, within the applicable
4 statute of limitations, that Hixson has failed and continues to fail to adequately implement
5 the SWPPP for the Facility, in violation of the Storm Water Permit.

6 286. Plaintiff is informed and believes, and thereon alleges, within the applicable
7 statute of limitations, that Hixson has failed and continues to fail to adequately revise the
8 SWPPP for the Facility, in violation of the Storm Water Permit.

9 287. Plaintiff is informed and believes, and thereon alleges, that Defendant FPC
10 and Defendant Trustee each have lease agreements with Hixson that require compliance
11 with all applicable laws and regulations and other provisions to inspect the property,
12 giving them knowledge and control over the errors and omissions giving rise to the
13 violations alleged herein, and are consequently liable parties under the Clean Water Act.

14 288. Defendants have been in violation of the Storm Water Permit at the Facility
15 every day from March 6, 2017, to the present.

16 289. Defendants' violations of the Storm Water Permit and the CWA at the
17 Facility are ongoing and continuous.

18 290. Defendants will continue to be in violation of the Storm Water Permit and
19 the CWA each and every day Defendants fail to adequately develop, implement, and/or
20 revise the SWPPP for the Facility.

21 291. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts
22 and omissions described herein constitute violations of individual terms of the Storm
23 Water Permit, compliance with which is required to lawfully discharge pollutants to
24 waters of the United States.

25 292. Plaintiff alleges that its members have been harmed by Defendants' acts and
26 omissions described herein and have standing to bring this suit.

27 293. Each and every violation of the Storm Water Permit SWPPP requirements at
28 the Facility is a separate and distinct violation of the CWA.

294. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties for each and every violation of the CWA occurring from March 6, 2017, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

295. An action for injunctive relief under the CWA is authorized by Section 505(a) of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

296. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

WHEREFORE, Plaintiff prays for judgment against the Defendants as set forth hereafter.

FIFTH CAUSE OF ACTION

Defendants' Failure to Adequately Develop, Implement, and/or Revise a Monitoring Implementation Program in Violation of the Storm Water Permit and the Clean Water Act.

33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)

297. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

298. Plaintiff is informed and believes, and thereon alleges, within the applicable statute of limitations, that Hixson has failed and continues to fail to develop an adequate MIP for the Facility, in violation of the Storm Water Permit.

299. Plaintiff is informed and believes, and thereon alleges, within the applicable statute of limitations, that Hixson has failed and continues to fail to adequately implement the MIP for the Facility, in violation of the Storm Water Permit.

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1 300. Plaintiff is informed and believes, and thereon alleges, within the applicable
2 statute of limitations, that Hixson has failed and continues to fail to adequately revise the
3 MIP for the Facility, in violation of the Storm Water Permit.

4 301. Plaintiff is informed and believes, and thereon alleges, that Defendant FPC
5 and Trustee each have lease agreements with Hixson that require compliance with all
6 applicable laws and regulations and other provisions to inspect the property, giving them
7 knowledge and control over the errors and omissions giving rise to the violations alleged
8 herein, and are consequently liable parties under the Clean Water Act.

9 302. Defendants have been in violation of the Storm Water Permit monitoring
10 requirements at the Facility every day from March 6, 2017, to the present.

11 303. Defendants' violations of the Storm Water Permit monitoring requirements
12 and the CWA at the Facility are ongoing and continuous.

13 304. Hixson, as the Facility's Owner and Operator, will continue to be in violation
14 of Section XI of the Storm Water Permit and the CWA each and every day it fails to
15 adequately develop, implement, and/or revise the MIP for the Facility.

16 305. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts
17 and omissions described herein constitute violations of individual terms of the Storm
18 Water Permit, compliance with which is required to lawfully discharge pollutants to
19 waters of the United States.

20 306. Plaintiff alleges that its members have been harmed by Defendants' acts and
21 omissions described herein and have standing to bring this suit.

22 307. Each and every violation of the Storm Water Permit MIP requirements at the
23 Facility is a separate and distinct violation of the CWA.

24 308. By committing the acts and omissions alleged above, the Defendants are
25 subject to an assessment of civil penalties for each and every violation of the CWA
26 occurring from March 6, 2017, to the present, pursuant to Sections 309(d) and 505 of the
27 CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

28 309. An action for injunctive relief under the CWA is authorized by Section 505(a)

1 of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
 2 alleged above would irreparably harm Plaintiff and the citizens of the State of California,
 3 for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

4 310. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
 5 an actual controversy exists as to the rights and other legal relations of the Parties.

6 WHEREFORE, Plaintiff prays for judgment against the Defendants as set forth
 7 hereafter.

8 **SIXTH CAUSE OF ACTION**

9 **Defendants' Failure to Report as Required by the Storm Water Permit in Violation** 10 **of the Storm Water Permit and the Clean Water Act.**

11 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

12 311. Plaintiff incorporates the allegations contained in the above paragraphs as
 13 though fully set forth herein.

14 312. Plaintiff is informed and believes, and thereon alleges, within the applicable
 15 statute of limitations, that the Hixson's Annual Reports fail to meet the requirements of
 16 Section XVI(B) of the Storm Water Permit.

17 313. Plaintiff is informed and believes, and thereon alleges, within the applicable
 18 statute of limitations, that the Hixson's Annual Reports erroneously certify compliance
 19 with the Storm Water Permit.

20 314. Plaintiff is informed and believes, and thereon alleges, that Defendants' acts
 21 and omissions described herein constitute violations of individual terms of the Storm
 22 Water Permit, compliance with which is required to lawfully discharge pollutants to
 23 waters of the United States.

24 315. Plaintiff is informed and believes, and thereon alleges, that Defendant FPC
 25 and Trustee each have lease agreements with Hixson that require compliance with all
 26 applicable laws and regulations and other provisions to inspect the property, giving them
 27 knowledge and control over the errors and omissions giving rise to the violations alleged
 28 herein, and are consequently liable parties under the Clean Water Act.

1 316. Plaintiff alleges that its members have been harmed by Defendants' acts and
2 omissions described herein and have standing to bring this suit.

3 317. Defendants' violations of the reporting requirements of the Storm Water
4 Permit and the CWA are ongoing and continuous.

5 318. By committing the acts and omissions alleged above, Defendants are subject
6 to an assessment of civil penalties for each and every violation of the CWA occurring
7 from March 6, 2017, to the present, pursuant to Sections 309(d) and 505 of the CWA, 33
8 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

9 319. An action for injunctive relief under the CWA is authorized by Section 505(a)
10 of the CWA. 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
11 alleged above would irreparably harm Plaintiff and the citizens of the State of California,
12 for which harm Plaintiff has no plain, speedy, or adequate remedy at law.

13 320. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because
14 an actual controversy exists as to the rights and other legal relations of the Parties.

15 WHEREFORE, Plaintiff prays judgment against the Defendants as set forth
16 hereafter.

17 **VII. RELIEF REQUESTED**

18 321. Plaintiff respectfully requests that this Court grant the following relief:

19 a. A Court order declaring the Defendants to have violated and in
20 violation of Sections 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b);
21 for discharging pollutants from the Facility in violation of a permit issued pursuant to
22 Section 402(p) of the CWA, 33 U.S.C. § 1342(p), for failing to meet effluent limitations
23 which include numeric effluent limitations and BAT/BCT requirements, for failing to
24 meet receiving water limitations, for failing to develop and implement an adequate
25 SWPPP, for failing to comply with the monitoring provisions of the Storm Water Permit,
26 for failing to submit accurate annual reports, for failing to timely submit ERA
27 documentation, and for failing to comply with the substantive and procedural
28 requirements of the Storm Water Permit;

1 b. A Court order enjoining Defendants from discharging pollutants in
2 violation of an NPDES permit;

3 c. A Court order requiring Defendants to implement affirmative
4 injunctive measures designed to eliminate Defendants' violations of the substantive and
5 procedural requirements of the Storm Water Permit and the Clean Water Act;

6 d. A Court order assessing civil monetary penalties for each violation of
7 the CWA at \$59,973 per day per violation for all violations that occurred after November
8 2, 2015 and were assessed on or after January 12, 2022. *See* 33 U.S.C. §§ 1319(d) and
9 1365(a); Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4;

10 e. A Court order awarding Plaintiff its reasonable costs of suit, including
11 attorneys', witness, experts', and consultants' fees, as permitted by Section 505(d) of the
12 Clean Water Act, 33 U.S.C. § 1365(d); and

13 f. Any other relief as this Court may deem appropriate.
14

15 Dated: May 6, 2022

Respectfully submitted,

17 /s/ Sarah J. Spinuzzi
18 Sarah Spinuzzi
19 Attorney for Plaintiff
20 Orange County Coastkeeper
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